AN ACT to amend the social services law, the domestic relations law, the family court act, the civil practice law and rules, the judiciary law, the surrogate's court procedure act and the county law, in relation to termination of parental rights, transfer of the care and custody of children, periodic family court review of foster care status, and adoption, child custody and child protective proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The heading and subdivisions one and two of section three hundred eighty-four of the social services law, as last amended by chapter six hundred eighty-nine of the laws of nineteen hundred sixty-two, are hereby amended to read as follows:

§384. Guardianship and custody of destitute or dependent children; commitment by surrender instrument

1. Method. The guardianship of the person and the custody of a destitute or dependent child under the age of eighteen years may be committed to an authorized agency [either by an order of the surrogate or judge of the family court as hereinafter provided or] by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents;

(c) [if the father of such child shall have neglected to provide for his family during the six months next preceding, or]if such child is born out of wedlock, by the mother of such child;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record;

2. Terms. Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms[,for such time]and subject to such conditions as may be agreed upon by the parties thereto. [If one of the purposes of such surrender is the adoption of such child from such authorized agency the] The instrument shall [make specific provision therefor and it may] recite that the authorized agency is thereby authorized and empowered to consent to the adoption of such child in the place and stead of the person signing the instrument, and may recite that the person signing the instrument waives any notice of such adoption [; it may also provide for the absolute surrender of such child to such authorized agency]. But no such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the[officer or board legally exercising the powers of a public welfare] social services official of the county[,] /or city[or town] sought to be charged with the support of such child.

§2. Subdivisions six and seven of section three hundred eighty-four of such law are hereby REPEALED.

§3. Such law is hereby amended by adding thereto a new section, to be section three hundred eighty-four-b, to read as follows:

§384-b. Guardianship and custody of destitute or dependent children; commitment by court order

1. Statement of legislative findings and intent. The legislature hereby finds that many children experience excessively protracted stays in foster care without being adopted or returned to their parents or other custodians. Such excessive stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens.

It is the intent of the legislature in enacting this section to provide a fair and timely basis for the freeing of children for adoption in appropriate situations in order to reduce the incidence of harmfully protracted foster care. The legislature intends to protect the constitutional rights of parents. However, it hereby declares that the best interests of children are the paramount concern to the state and that where such best interests are endangered by parental failure to provide a child with a positive, nurturing family relationship, the state may intervene and free the child for adoption in accordance with the provisions of this section.

2. For the purposes of this section, "child" shall mean a person under the age of eighteen years.

3. (a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section three hundred ninety-two or to section one thousand fifty-five of the family court act to institute a proceeding under this section, by order of a surrogate or judge of the family court, as hereinafter provided.

(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to section three hundred ninety-two or to section one thousand fifty-five of the family court act.

(c) Proceedings under this section shall be originated in the county in which the authorized agency has an office for the regular conduct of business or in which the child or his parent resides at the time of the initiation of the proceeding.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraphs (c) or (d) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraphs (a) or (b) of subdivision four.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents and upon such other persons as the surrogate or judge may in his discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice

to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including the right to have counsel assigned by the court in any case where they are financially unable to obtain counsel. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of section six hundred seventeen of the family court act, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act.

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. Any proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in paragraphs (a), (b) or (d) of subdivision four are based upon a fair preponderance of the evidence, or upon a finding that one or more

of the grounds specified in paragraph (c) of subdivision four are based upon clear and convincing proof.

(h) In any proceeding brought pursuant to the provisions of this section, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of section three hundred eighty-four.

4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:

(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the initiation of the proceeding under this section; or

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the initiation of the proceeding under this section; or

(d) The child is a permanently neglected child.

5. (a) For the purposes of this section, a child is "abandoned" by his parent if such parent, while the child is in the care of an authorized agency, evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. Such determination shall be made without regard to efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a). Payment by a parent toward the support of the child shall be deemed a communication by such parent with the child or agency.

6. (a) For the purposes of this section, "mental illness" means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(b) For the purposes of this section, "mental retardation" means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a physician and psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.

(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every case the judge shall order the parent to be examined by, and shall take the testimony of, a physician and a certified psychologist, in the case of a parent alleged to be mentally retarded, or of a psychiatrist, in the case of a parent alleged to be mentally ill, such physician, psychologist or psychiatrist to be appointed by the court pursuant to section thirty-five of the judiciary law. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or renders himself unavailable therefor, whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed physician, psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his opinion.

7. (a) For the purposes of this section, "permanently neglected child" shall mean a child who is in the care of an authorized agency, either in an institution or in a foster home, and whose parent or custodian has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, al-

though physically and financially able to do so, nothwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child.

In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is not of such character as to reasonably demonstrate affectionate and concerned parenthood shall be deemed an insubstantial contact.

(c) As used in paragraph (a) of this subdivision, "to plan for the future of the child" shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor;

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(ii) A parent shall be deemed unable to maintain contact with or plan for the future of the child while he is actually incarcerated; and

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(iii) The time during which a parent is actually hospitalized, institutionalized, or incarcerated shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

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(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when the parent has failed for a period of six months to keep the agency apprised of his or her location.

§4. Subdivisions one and two of section three hundred eighty-four-a of such law, as added by chapter seven hundred ten of the laws of nineteen hundred seventy-five are hereby amended to read as follows:

1. Method. The care and custody of a child may be transferred by a parent or guardian, and the care of a child may be transferred by any person to whom a parent has entrusted the care of the child, to an authorized agency by a written instrument in

accordance with the provisions of this section. Such transfer by a person who is not the child's parent or guardian shall not affect the rights or obligations of the parents or guardian, and such transfer shall be deemed a transfer of the care and custody of the child for the purposes of sections three hundred fifty-eight-a and three hundred ninety-two.

2. Terms. The instrument shall be upon such terms, for such time and subject to such conditions as may be agreed upon by the parties thereto. The department may promulgate suggested terms and conditions for inclusion in such instruments, but shall not require that any particular terms and conditions be included. If the instrument provides that the child is to be returned by the authorized agency on a date certain or upon the occurrence of an identifiable event, such agency shall return such child at such time unless such action would be contrary to court order entered at any time prior to such date or event pursuant to section three hundred[eighty-four] eighty-four-b or section three hundred ninety-two of this chapter or article six or article ten of the family court act or unless there is then pending a proceeding pursuant to such section three hundred eighty-four-b or article six or article ten. The parent or guardian may, upon written notice to such agency, request return of the child at any time prior to the identified date or event, whereupon such agency may, without court order, return the child or, within ten days after such request, may notify the parent or guardian that such request is denied. If such agency denies or fails to act upon such request, the parent or guardian may seek

return of the care and custody of the child by petition in family court for return of such child and order to show cause, or by writ of habeas corpus in the supreme court. If the instrument fails to specify a date or identifiable event upon which such agency shall return such child, such agency shall return the child within ten days after having received notice that the parent or guardian wishes the child returned, unless such action would be contrary to court order entered at any time prior to the expiration of such ten day period pursuant to section three hundred [eighty-four] eighty-four-b or section three hundred ninety-two of this chapter or article six or article ten of the family court act or unless there is pending at the time such notice is received a proceeding pursuant to such section three hundred eighty-four-b or article six or article ten. Expenditures by a social services district for the care and maintenance of a child who has been continued in the care of an authorized agency in violation of the provisions of this subdivision shall not be subject to state reimbursement.

§5. Section three hundred ninety-two of such law, as last amended by chapters seven hundred eight and seven hundred ten of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§392. Foster care status; periodic family court review

1. As used in this section, unless otherwise expressly stated or unless the context requires a different interpretation, (a) "foster care" shall mean care provided a child in a foster family free or boarding home, group home, agency boarding home, child care institution, or any combination thereof:

(b) "child" shall mean a child under the age of eighteen years [whose guardianship and custody have been committed to an authorized agency pursuant to section three hundred eighty-four of this chapter by an order of a surrogate or judge of the family court or by a surrender instrument, or whose care and custody have been transferred to an authorized agency by an instrument executed pursuant to section three hundred eighty-four-a of this chapter, or whose custody has been temporarily or permanently awarded to an authorized agency by a judge of the family court pursuant to a finding that the child is a permanently neglected child as defined in section six hundred eleven of the family court act] <u>for whom an authorized agency is providing foster care, and who has not been legally freed for adoption, except a child who is in the care of an authorized agency pursuant to court order under article seven or ten of the family court act</u>.

2. Where a child has remained in foster care for a continuous period of eighteen months a petition to review the foster care status of such child:

(a) shall be filed in the family court by the authorized agency charged with the care [,] <u>and</u> custody [or guardianship] of such child;

(b) may be filed by another authorized agency having the supervision of such foster care;

(c) may be filed by the foster parent or parents in whose home the child resides or has resided during such period of eighteen months.

In the event that foster care of a child [in foster care is returned to his parent or parents] is discontinued and, within three months [of such return,] thereafter the child is again placed under the care of an authorized agency, [such period of return] the period during which the child was not in foster care shall not constitute an interruption of continuous foster care for the purposes of review pursuant to this section. However, [the] such period [of return] shall not be considered to be a part of any continuous period of foster care for the purposes of determining the length of time that a child may have been in foster care.

3. Such petition:

(a) shall be filed in the family court in the county in which the authorized agency charged with the care[,] and custody [or guardianship] of such child has its principal office or where the child resides;

(b) shall set forth the disposition sought and the grounds therefor;

(c) shall, when filed by an authorized agency and notice is to be given to a parent, guardian or relative of the child, omit, for good cause shown, the name and address of the foster parent or parents with whom such child is residing at the time of the filing of the petition, and, in lieu thereof, there shall be filed with such petition a verified schedule executed by such agency setting forth the name and address of such foster parent or parents.

4. Notice of the hearing, including a statement of the dispositional alternatives of the court, shall be given and a

copy of the petition shall be served upon the following, each of whom shall be a party entitled to participate in the proceeding:

(a) the authorized agency charged with the care[,] and custody [or guardianship] of such child, if such authorized agency is not the petitioner;

(b) the authorized agency having supervision of such foster care, if such authorized agency is not the petitioner;

(c) the foster parent or parents in whose home the child resided or resides at or after the expiration of a continuous period of eighteen months in foster care;

(d) the child's parent or guardian who transferred the care and custody of such child temporarily to an authorized agency;

(e) such other persons as the court may, in its discretion, direct.

5. Service of notice of the hearing and the petition shall be made in such manner and on such notice as the court may, in its discretion,prescribe.

6. The court may, in its discretion, dispense with the attendance of the child at the hearing or may, with the consent of the parties, dispense with the hearing and make a determination based upon papers and affidavits submitted to the court.

7. At the conclusion of such hearing, the court shall, upon the proof adduced, in accordance with the best interest of the child, enter an order of disposition:

(a) directing that foster care of the child be continued; or

(b) [in the case of a child who has been committed temporarily to the care of an authorized agency by a parent, guardian or

relative,] directing that the child be returned to [such] the parent, guardian or relative; or

(c) [in the case of a child who has been committed temporarily to the care of an authorized agency by a parent, guardian or relative,] directing [that the] any agency specified in subdivision four to institute a proceeding, pursuant to section three hundred eighty-four-b of this chapter, to legally free such child for adoption, if the court finds reasonable cause to believe that grounds therefor exist. [and upon] Upon a failure by such agency to institute such a proceeding within [thirty] ninety days after entry of such order, [permitting] the court shall permit the foster parent or parents in whose home the child resides to institute such a proceeding unless the agency, for good cause shown and upon due notice to all parties to the proceeding, has obtained a modification or extension of such order, or unless the court has reasonable cause to believe that such foster parent or parents would not obtain approval of their petition to adopt the child in a subsequent adoption proceeding. [; or

(d) in the case of a child whose guardianship and custody have been committed to an authorized agency by an order of a surrogate or judge of the family court or by a surrender instrument or who has been judicially declared to be a permanently neglected child, directing that such child be placed for adoption in the foster family home where he resides or has resided or with any other person or persons.]

An order of disposition entered pursuant to this subdivision shall include the court's findings supporting its determination that such order is in accordance with the best interest of the

child. If the court promulgates separate findings of fact or conclusions of law, or an opinion in lieu thereof, the order of disposition may incorporate such findings and conclusions, or opinions, by reference.

8. The court may make an order of protection in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person or agency who is before the court [and may require any such person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe].

9. The court may make an order directing an authorized agency to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the [moral and temporal welfare] best interests of the child. Such order may include a specific plan of action for the authorized agency including, without limitation, requirements that such agency assist the parent in obtaining adequate housing, employment, counselling, medical care or psychiatric treatment.

10. The court shall possess continuing jurisdiction in proceedings under this section and, in the case of children who are continued in foster care, shall rehear the matter whenever it deems necessary or desirable, or upon petition by any party entitled to notice in proceedings under this section, but at least [every] within twenty-four months after the entry of the last previous order of disposition pursuant to subdivision seven of this section.

ITALS

11. In any proceeding brought pursuant to the provisions of this section, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

§6. Paragraph (f) of subdivision six of section three hundred ninety-eight of such law, as amended by chapter eight hundred thirty-nine of the laws of nineteen hundred sixty-eight, is hereby amended to read as follows:

(f) When in his judgment it is advisable for the welfare of the child, accept the surrender of a child by an instrument in writing in accordance with the provisions of this chapter. Any inconsistent provision of law notwithstanding, the acceptance by the social services official of [an absolute] a surrender of a child born out of wedlock from the mother of such child shall relieve her from any and all liability for the support of such child.

§7. Subdivision two of section three hundred seventy-one of such law, as amended by chapter six hundred forty of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

2. "Abandoned child" means a child under the age of eighteen years who is abandoned [or deserted in any place] by both parents, or by the parent having its custody, or by any other person or persons lawfully charged with its care or custody [, and left

(a) in destitute circumstances, or

(b) without proper food, shelter or clothing, or

(c) without being visited or having payments made toward his support, for a period of at least six months, by his parent, guardian or other lawful custodian without good reason] ,in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b;

§8. Subdivision seven of section one hundred nine of the domestic relations law, as added by chapter seven hundred seventeen of the laws of nineteen hundred sixty, is hereby amended to read as follows:

7. "A child who has been surrendered to an authorized agency for the purpose of adoption" shall mean a child who has been surrendered to such an agency [for the purpose of adoption or absolutely] pursuant to the provisions of section three hundred eighty-four of the social[welfare] services law.

§9. Section one hundred eleven of such law, as last amended by chapters two hundred forty-six and seven hundred four of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§111. Whose consent required

1. Subject to the limitations hereinafter set forth consent to adoption shall be required as follows:

[1.] (a) Of the adoptive child, if over fourteen years of age, unless the judge or surrogate in his discretion dispenses with such consent;

[2.] (b) Of the parents or surviving parent, whether adult or infant, of a child born in wedlock;

[3.] (c) Of the mother, whether adult or infant, of a child born out of wedlock;

[4.] (d) Of any person or authorized agency having lawful custody of the adoptive child.

2. The consent shall not be required of a parent or of any other person having custody of the child:

(a) who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so; or

(b) who has surrendered the child to an authorized agency [for the purpose of adoption] under the provisions of section three hundred eighty-four of the social services law; or

(c) for whose child a guardian has been appointed under the provisions of section three hundred [eighty-four] eighty-four-b of the social services law or article ten of the family court act; or

(d) who has been deprived of civil rights pursuant to the civil rights law and whose civil rights have not been restored; or

(e) who [is insane or who has been judicially declared incompetent or who is mentally retarded as defined by the mental hygiene law or who has been adjudged to be an habitual drunkard or who has been judicially deprived of the custody of the child on account of cruelty or neglect, or pursuant to a judicial finding that the child is a permanently neglected child as defined in section six hundred eleven of the family court act of the state of New York], by reason of mental illness or mental retardation, as defined in subdivision six of section three hundred eighty-four-b of the social services law, is presently and for the foreseeable future unable to provide proper care for the child. The determination as to whether a parent is mentally ill or mentally retarded shall be made in accordance with the criteria and procedures set forth in subdivision six of section three hundred eighty-four-b of the social services law. [; except that notice]

3. Notice of the proposed adoption shall be given in such manner as the judge or surrogate may direct and an opportunity to be heard thereon may be afforded to a parent who has been deprived of civil rights and to [a] any other parent whose consent to adoption may not be required pursuant to subdivision two, if the judge or surrogate so orders. Notwithstanding any other provision of law, neither the notice of a proposed adoption nor any process in such proceeding shall be required to contain the name of the person or persons seeking to adopt the child. [For the purposes of this section, evidence of insubstantial and infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a finding that such parent has abandoned such child.]

4. Where the adoptive child is over the age of eighteen years the consents specified in [subdivisions two and three] paragraphs (b) and (c) of subdivision one of this section shall not be required, and the judge or surrogate in his discretion may direct that the consent specified in [subdivision four] paragraph (d) of subdivision one of this section shall not be required if in his opinion the [moral and temporal, best interests of the adoptive child will be promoted by the adoption and such consent cannot for any reason be obtained.

5. An adoptive child who has once been lawfully adopted may be readopted directly from such child's adoptive parents in the same manner as from its natural parents. In such case the consent of such natural parents shall not be required but the judge or surrogate in his discretion may require that notice be given to the natural parents in such manner as he may prescribe.

6. For the purposes of paragraph (a) of subdivision two:

(a) In the absence of evidence to the contrary, the ability to visit and communicate with a child or person having custody of the child shall be presumed.

(b) Evidence of insubstantial or infrequent visits or communication by the parent or other person having custody of the child shall not, of itself, be sufficient as a matter of law to preclude a finding that the consent of such parent or person to the child's adoption shall not be required.

(c) The subjective intent of the parent or other person having custody of the child, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph (a) of subdivision two manifesting such intent, shall not preclude a

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determination that the consent of such parent or other person to the child's adoption shall not be required.

(d) Payment by a parent toward the support of the child of a fair and reasonable sum, according to the parent's means, shall be deemed a substantial communication by such parent with the child or person having legal custody of the child.

§10. Subdivision three of section one hundred twelve of such law, as amended by chapter five hundred seventy of the laws of nineteen hundred seventy, is hereby amended to read as follows:

3. The authorized agency must present to such judge or surrogate a schedule to be annexed to the petition which shall be verified by a duly constituted official of the authorized agency having custody of the adoptive child or actually placing the child for adoption and shall contain (1) the full name of the child, (2) the manner in which the authorized agency obtained custody of the adoptive child, (3) the facts, if any, which render unnecessary the consent of either or both of the parents of the adoptive child, (4) a statement whether either parent had ever requested the agency to return the child to the parent, within thirty days of the execution and delivery of an instrument of [adoption] surrender to an authorized agency and, if so, all facts relating thereto. If a request for return of the child to a parent be made after the presentation to the court of the petition and schedule, the authorized agency shall promptly report to the court in writing the facts relating thereto and (5) all available information comprising the child's medical history.

§11. Section one hundred fourteen of such law, as last amended by chapters two hundred sixty-one and one thousand eleven of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

§114. Order of adoption

If satisfied that the [moral and temporal] best interests of the adoptive child will be promoted thereby the judge or surrogate shall make an order approving the adoption and directing that the adoptive child shall thenceforth be regarded and treated in all respects as the child of the adoptive parents or parent. In determining whether the [moral and temporal] best interests of the adoptive child will be promoted by the adoption, the judge or surrogate shall give due consideration to any assurance by a commissioner of social services that he will provide necessary support and maintenance for the adoptive child pursuant to the social services law. Such order shall contain the full name, date and place of birth and reference to the schedule annexed to the petition containing the medical history of the child in the body thereof and may direct that the child's medical history be furnished to the adoptive parents. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order shall direct that the name of the adoptive child be changed to the name stated in the agreement of adoption and that henceforth he shall be known by that name. All such orders made by a family court judge of Westchester county since September first nineteen hundred sixty-two, and on file in the office of the county clerk of such county shall be transferred to the clerk of the family

court of such county. Such order and all the papers in the proceeding shall be filed in the office of the court granting the adoption and the order shall be entered in books which shall be kept under seal and which shall be indexed by the name of the adoptive parents and by the full original name of the child. Such order, including orders heretofore entered, shall be subject to inspection and examination only as hereinafter provided. Notwithstanding the fact that adoption records shall be sealed and secret, they may be microfilmed and processed pursuant to an order of the court, provided that such order provides that the confidentiality of such records be maintained. If the confidentiality is violated, the person or company violating it can be found guilty of contempt of court. The fact that the adoptive child was born out of wedlock shall in no case appear in such order. The written report of the investigation together with all other papers pertaining to the adoption shall be kept by the judge or surrogate as a permanent record of his court and such papers must be sealed by him and withheld from inspection. No certified copy of the order of adoption shall issue unless authorized by court order, except that certified copies may issue to the agency or agencies in the proceeding prior to the sealing of the papers. Before the record is sealed, such order may be granted upon written ex parte application on good cause shown and upon such conditions as the court may impose. After the record is sealed, such order may be granted only upon notice as hereinafter provided for disclosure or access and inspection of records. The clerk upon request of a person or agency entitled thereto shall issue certificates of adoption

which shall contain only the new name of the child and the date and place of birth of the child, the name of the adoptive parents and the date when and court where the adoption was granted, which certificate as to the facts recited therein shall have the same force and effect as a certified copy of an order of adoption.

No person, including the attorney for the adoptive parents shall disclose the surname of the child directly or indirectly to the adoptive parents except upon order of the court. No person shall be allowed access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct.

In like manner as a court of general jurisdiction exercises such powers, a judge or surrogate of the court in which the order of adoption was made may open, vacate or set aside such order of adoption for fraud, newly discovered evidence or other sufficient cause.

§12. Subdivision five of section one hundred fifteen of such law, as added by chapter one hundred forty-seven of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

5. Where the petition alleges that either or both of the natural parents of the child have been deprived of civil rights or [have been judicially declared incompetent or have been adjudged to be habitual drunkards] <u>are mentally ill or mentally</u>

retarded, proof shall be submitted that such disability exists at the time of the proposed adoption.

§13. Subdivision four of section one hundred sixteen of such law, as added by chapter one hundred forty-seven of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

4. Stage two of private-placement adoption. If the judge or surrogate has found that there has been compliance with all the requirements hereof and is satisfied that the [moral and temporal] best interests of the child will be promoted by granting an order of adoption, the provisions of section one hundred fourteen of title two of this article shall apply.

§14. Section six hundred eleven of the family court act, as last amended by chapters seven hundred and seven hundred four of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§611. Permanently neglected child; purpose of part

[A "permanently neglected child" is a person under eighteen years of age who is in the care of an authorized agency, either in an institution or in a foster home, and whose parent or custodian has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the moral and temporal welfare of the child. In the event that the parent defaults after

due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court. For the purposes of this section, evidence of insubstantial and infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child.]

I T A L S

The purpose of this part is to provide the procedures for proceedings initiated in family court, pursuant to section three hundred eighty-four-b of the social services law, for the commitment of the guardianship and custody of a child upon the ground that the child is a permanently neglected child. As used in this part "permanently neglected child" shall mean permanently neglected child as defined in subdivision seven of section three hundred eighty-four-b of the social services law, and unless the context requires otherwise, the provisions of such section three hundred eighty-four-b shall be deemed applicable requirements in addition to the procedures contained in this part. All references in this part to petitions and proceedings initiated "under this part" shall be deemed references to petitions and proceedings initiated under section three hundred eighty-four-b of the social services law upon the ground that the child is a permanently neglected child.

§15. Sections six hundred twelve, six hundred thirteen and six hundred fifteen of such act are hereby REPEALED.

§16. Section six hundred fourteen of such act, as last amended by chapters seven hundred and seven hundred one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§614. Originating proceeding [permanently to terminate] for the commitment of the guardianship and custody of a permanently neglected child

1. A proceeding [permanently to terminate the parent's or other custodian's] for the commitment of the guardianship and custody of a child on the ground of permanent neglect is originated by a petition, alleging:

(a) the child is a person under eighteen years of age;

(b) the child is in the care of an authorized agency, [either in an institution or in a foster home] in a foster family free or boarding home, group home, agency boarding home, child care institution, or any combination thereof;

(c) the authorized agency has made diligent efforts to encourage and strengthen the parental relationship and specifying the efforts made or that such efforts would be detrimental to the moral and temporal welfare] best interests of the child and specifying the reasons therefor;

(d) the parent or custodian, notwithstanding the agency's efforts, has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child although physically and financially able to do so; and

(e) the best interests of the child require that the [parents or other custodian's] guardianship and custody of the child be [terminated permanently] committed to an authorized agency or to a foster parent authorized to originate this proceeding under section three hundred ninety-two of the social services law or section one thousand fifty-five of this act.

2. Where the petitioner is not the authorized agency, allegations relating to the efforts of the authorized agency may be made upon information and belief.

§17. Section six hundred sixteen of such act is hereby amended to read as follows:

§616. Issuance of summons

On the filing of a petition under this part, the court may cause a copy of the petition and a summons to be issued, requiring the parent to show cause why the court should not enter an order [depriving the parent of all rights of] committing the guardianship and custody of the child [and awarding custody of such child] to the petitioner for the reason that the child is permanently neglected.

§18. Subdivision (c) of section six hundred seventeen of such act, as amended by chapter seven hundred sixty-nine of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

(c) Personal service within or without the state or in a foreign county [and service by publication] shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act, as the same may be amended from time to time, with respect to service of a citation. [The judge shall have such authority with respect to modes of service of summons by publication as is granted to the surrogate with respect to modes of service of a citation by publication, except that, unless otherwise ordered by the judge, publication in one newspaper designated in the order shall be sufficient.]

§19. Section six hundred seventeen of such act is hereby amended by adding thereto a new subdivision, to be subdivision (d),to read as follows:

(d) Service of the petition and other process by publication shall be made in accordance with the provisions of CPLR 316, provided, however, that a single publication in only one newspaper designated in the order shall be sufficient.

§20. Section six hundred twenty-two of such act, as amended by chapter five hundred twenty-nine of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

§622. Definition of "fact-finding hearing"

When used in this part, "fact-finding hearing" means in the case of a petition [permanently to terminate] for the commitment of the guardianship and custody of a child, a hearing to determine whether the allegations required by paragraphs (a), (b), (c), and (d) of section six hundred fourteen are supported by a fair preponderance of the evidence.

§21. Section six hundred twenty-three of such act is hereby amended to read as follows:

§623. Definition of "dispositional hearing"

When used in this part, "dispositional hearing" means a hearing to determine [whether the interests of the child require that the parent's custody or the custody of another person responsible for the care of the child be terminated permanently and, if so,] what order of disposition should be made in accordance with the best interests of the child.

§22. Section six hundred twenty-four of such act, as amended by chapter five hundred twenty-nine of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

§624. Evidence

Only competent, material and relevant evidence may be admitted in a fact-finding hearing; only material and relevant evidence may be admitted in a dispositional hearing. Evidence of parental contact or of failure to maintain contact with a child subsequent to the date of the filing of a petition under this part shall be inadmissible in the fact-finding hearing. Such evidence may be admitted in the dispositional hearing but shall not, of itself, be sufficient as a matter of law to preclude or require an order committing the guardianship and custody of the child.

§23. Section six hundred twenty-five of such act, as amended by chapter five hundred twenty-nine of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

§625. Sequence of hearings

(a) Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made; provided, however, that if all parties consent the court may, upon motion of any party or upon its own motion, dispense with the dispositional hearing and make an order of disposition on the basis of competent evidence admitted at the fact-finding hearing.

(b) Reports prepared by the probation service or a duly authorized agency for use by the court prior to the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, withhold from or disclose in whole or in part to the law guardian, counsel, party in interest, or other appropriate person. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing or in the making of an order of disposition without a dispositional hearing pursuant to subdivision (a).

§24. Section six hundred thirty-one of such act, as amended by chapter seven hundred one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§631. Disposition on adjudication of permanent neglect

At the conclusion of a dispositional hearing on a petition [permanently to terminate] for the commitment of the guardianship and custody of a child, the court shall enter an order of disposition:

(a) dismissing the petition in accord with section six hundred thirty-two; or

(b) suspending judgment in accord with section six hundred thirty-three; or

(c) [permanently terminating custody of the parent or other person responsible for the care of the child and awarding] committing the guardianship and custody of the child in accord with section six hundred thirty-four.

An order of disposition shall be made, pursuant to this section, solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular disposition.

§25. Section six hundred thirty-four of such act is hereby amended to read as follows:

§634. [Permanent termination of] Commitment of guardianship and custody; further orders

[If the] The court may enter [enters] an order under section six hundred thirty-one [permanently terminating custody, it may enter an order temporarily or permanently awarding] committing the guardianship and custody of the child to the petitioner on such conditions, if any, as it deems proper.

§26. Such act is hereby amended by adding thereto a new section, to be section six hundred fifty-five, to read as follows:

§655. Custody proceedings; privileged communications; best interests of child

1. In any action or proceeding in family court for the determination of the custody of a child, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil prac-

tice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

2. In any action or proceeding in family court for the determination of the custody of a child, such custody shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

§27. Paragraphs (iii) and (iv) of subdivision (a) of section two hundred sixty-two of such act, as added by chapter six hundred eighty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

(iii) the respondent in any proceeding under [parts one and] part three of article six of this act;

(iv) the parent, foster parent, or other person having physical or legal custody of the child in any proceeding under section three hundred fifty-eight-a, three hundred eighty-four, three hundred eighty-four-b, or three hundred ninety-two of the social services law;

§28. Paragraph (ii) of subdivision (f) of section one thousand twelve of such act, as added by chapter nine hundred sixty-two of the laws of nineteen hundred seventy, is hereby amended to read as follows:

(ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

§29. Section one thousand thirty-one of such act is hereby amended by adding thereto a new subdivision, to be subdivision (d), to read as follows:

I T A L S

(d) A proceeding under this article may be originated by a child protective agency pursuant to section one thousand thirty-two, notwithstanding that the child is in the care and custody of such agency. In such event, the petition shall allege facts sufficient to establish that the return of the child to the care and custody of his parent or other person legally responsible for his care would place the child in imminent danger of becoming an abused or neglected child.

§30. Paragraph (v) of subdivision (a) of section one thousand fifty-two of such act, as amended by chapter one thousand thirty-nine of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

(v) placing the respondent under supervision in accord with section one thousand fifty-seven [.] ; or

§31. Subdivision (a) of section one thousand fifty-two of such act is hereby amended by adding thereto a new paragraph, to be paragraph (vi), to read as follows:

(vi) committing the guardianship and custody of the child in accord with section one thousand fifty-eight.

§32. Section one thousand fifty-two of such act is hereby amended by adding thereto a new subdivision, to be subdivision (c), to read as follows:

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(c) In entering an order of disposition pursuant to paragraph (i), (ii), (iii), (iv) or (v) of subdivision (a) of this section, the court shall advise the respondent that any subsequent adjudication of child abuse arising out of acts of the respondent may result in the commitment of the guardianship and custody of the child pursuant to section one thousand fifty-eight.

§33. Section one thousand fifty-eight of such act, as added by chapter nine hundred sixty-two of the laws of nineteen hundred seventy, is hereby amended to read as follows:

§[1058] 1059. Abandoned child. If the court finds that a child was abandoned by his parents or by the other person lawfully charged with his care, it may make an order so finding and may discharge the child to the custody of the commissioner of social services [or to such other officer, board or department as may be authorized to receive children as public charges,] who shall provide for such child as in the case of a destitute child or as otherwise authorized by law. In such case the court shall direct the commissioner to institute a proceeding pursuant to section three hundred eighty-four-b of the social services law to legally free such child for adoption.

§34. Such act is hereby amended by adding thereto a new section, to be section one thousand fifty-eight, to read as follows:

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§1058. Commitment of guardianship and custody.

For purposes of section one thousand fifty-two, the court may commit the guardianship and custody of the child to a duly authorized agency upon a finding, based on clear and convincing, competent, material and relevant evidence introduced in the dispositional hearing, that the best interests of the child require that such action be taken, and that

(a) the child or another child for whose care the respondent is or has been legally responsible has previously been found to be an abused child as a result of the respondent's acts and that reasonable efforts to rehabilitate the respondent have been unsuccessful and are unlikely to be successful in the foreseeable future; or

(b) the child has been found to be an abused child as a result of acts of the respondent evincing a depraved indifference to human life.

§35. The civil practice law and rules is hereby amended by adding thereto a new section, to be section seven thousand thirteen, to read as follows:

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§7013. Custody proceedings; privileged communications; best interests of child

1. In any proceeding pursuant to this article for the determination of the custody of a minor, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as

set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

I T A L S

2. In any proceeding pursuant to this article for the determination of the custody of a minor, such custody shall be awarded solely on the basis of the best interests of the minor, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

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§36. Subdivision one of section thirty-five of the judiciary law, as last amended by chapters six hundred eighty-two and seven hundred six of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

1. a. When a court orders a hearing in a proceeding upon a writ of habeas corpus to inquire into the cause of detention of a person in custody in a state institution, or when it orders a hearing in a civil proceeding to commit or transfer a person to or retain him in a state institution when such person is alleged to be mentally ill, mentally defective or a narcotic addict, or when it orders a hearing for the commitment of the guardianship and custody of a child to an authorized agency by reason of the mental illness or mental retardation of a parent,

or when it orders a hearing to determine whether consent to the adoption of a child shall be required of a parent who is alleged to be mentally ill or mentally retarded, the court may assign counsel to represent such person if it is satisfied that he is financially unable to obtain counsel. Upon an appeal taken from an order entered in any such proceeding, the appellate court may assign counsel to represent such person upon the appeal if it is satisfied that he is financially unable to obtain counsel.

b. Upon an appeal in a criminal action or in a proceeding in the family court or surrogate's court wherein the defendant or person entitled to counsel pursuant to the family court act or surrogate's court procedure act, is financially unable to obtain counsel, the court of appeals or the appellate division of the supreme court may assign counsel other than in the manner as is prescribed in section seven hundred twenty-two of the county law only when it is satisfied that special circumstances require such assignment.

§37. Paragraph (a) of subdivision two of section three hundred seven of the surrogate's court procedure act is hereby amended by adding thereto a new subparagraph, to be subparagraph (iv), to read as follows:

(iv) In an adoption proceeding under article seven of the domestic relations law or in a proceeding under section three hundred eighty-four-b of the social services law, a single publication in only one newspaper shall be required.

§38. The article heading of article four of such act is hereby amended to read as follows:

APPEARANCE; PROTECTION OF PERSONS UNDER DISABILITY; COUNSEL FOR INDIGENT ADULTS IN SURROGATE'S COURT PROCEEDINGS

§39. Such act is hereby amended by adding thereto a new section, to be section four hundred seven, to read as follows:

§407. Assignment of counsel for indigent persons. 1. Each of the persons described below in this subdivision has the right to the assistance of counsel. When such person first appears in court, the surrogate shall advise such person before proceeding that he has the right to be represented by counsel of his own choosing, of his right to have an adjournment to confer with counsel, and of his right to have counsel assigned by the court in any case where he is financially unable to obtain the same:

(i) the respondent in any proceeding under section three hundred eighty-four-b of the social services law;

(ii) the respondent in any proceeding for the approval of a surrender instrument under section three hundred eighty-four of the social services law;

(iii) the parent of a child in any adoption proceeding who opposes the adoption of such child;

(iv) any of the above persons upon an appeal in any of the above proceedings.

2. Any order for the assignment of counsel issued under this section shall be implemented as provided in article eighteen-B of the county law.

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§40. Subdivision three of section seventeen hundred four of such act is hereby amended to read as follows:

3. Whether the infant has had at any time a guardian appointed by will or deed or an acting guardian in socage or a guardian of the person appointed pursuant to section 384 or section 384-b of the social [welfare] services law or section 1058 of the family court act.

§41. Subdivision two of section seventeen hundred five of such act is hereby amended to read as follows:

2. No process shall be necessary to a parent who has abandoned the infant or is deprived of civil rights or divorced from the parent having legal custody of the infant or an incompetent [or habitual drunkard] or who is otherwise judicially deprived of the custody of the infant or in case the infant is a married woman, to a husband who has abandoned her or is deprived of civil rights or divorced or an incompetent [or habitual drunkard].

§42. Subdivision two of section seven hundred seventeen of the county law, as amended by chapter six hundred eighty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

2. The public defender shall also represent, without charge, in a proceeding in family court or surrogate's court in the county or counties where such public defender serves, any person entitled to counsel pursuant to section two hundred sixty-two and section eleven hundred twenty of the family court act and section four hundred seven of the surrogate's court procedure act, who is financially unable to obtain counsel. When representing such person, the public defender shall counsel and represent him at

every stage of the proceedings, shall initiate such proceedings as in the judgment of the public defender are necessary to protect the rights of such person, and may prosecute any appeal when, in his judgment the facts and circumstances warrant such appeal.

§43. Section seven hundred eighteen of such law, as amended by chapter six hundred eighty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§718. Appointment of other counsel. Nothing contained herein shall preclude a court on its own motion or upon application by the public defender or by the indigent defendant or person described in section two hundred sixty-two[,] or section eleven hundred twenty of the family court act, or section four hundred seven of the surrogate's court procedure act, from appointing an attorney other than the public defender to represent such defendant or person or to assist in the representation of such defendant or person at any stage of the proceedings or on appeal. If such attorney is appointed, he shall serve without compensation, unless such compensation is otherwise provided for by law.

§44. The article heading of article eighteen-B of such law, as amended by chapter six hundred eighty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

REPRESENTATION OF PERSONS ACCUSED OF CRIME OR PARTIES BEFORE THE FAMILY COURT OR SURROGATE'S COURT

§45. Section seven hundred twenty-two of such law, as last amended by chapter seven hundred eighty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§722. Plan for representation. The governing body of each county and the governing body of the city in which a county is

wholly contained shall place in operation throughout the county by December first, nineteen hundred sixty-five a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act or section four hundred seven of the surrogate's court procedure act, who are financially unable to obtain counsel. Each plan shall also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

1. Representation by a public defender appointed pursuant to county law article eighteen-A.

2. In criminal proceedings, representation by counsel furnished by a private legal aid bureau or society designated by the county or city, organized and operating to give legal assistance and representation to persons charged with a crime within the city or county who are financially unable to obtain counsel. In proceedings under the family court act, representation by a private legal aid bureau or society, or by any corporation, voluntary association, or organization permitted to practice law under the authority of subdivision five of section four hundred ninety-five of the judiciary law.

3. Representation by counsel furnished pursuant to a plan of a bar association in each county or the city in which a county is wholly contained whereby the services of private counsel are rotated and coordinated by an administrator, and such administrator may be compensated for such service. Any plan of a bar

association must receive the approval of the state administrator before the plan is placed in operation. In the county of Hamilton, such representation may be by counsel furnished by the Fulton county bar association pursuant to a plan of the Fulton county bar association.

4. Representation according to a plan containing a combination of any of the foregoing. Any judge, justice or magistrate in assigning counsel pursuant to section 170.10, 180.10, 210.15 and 720.30 of the criminal procedure law, or in assigning counsel to a defendant when a hearing has been ordered in a proceeding upon a motion, pursuant to article four hundred forty of the criminal procedure law, to vacate a judgment or to set aside a sentence, or in assigning counsel pursuant to the provisions of section two hundred sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, shall assign counsel furnished in accordance with a plan conforming to the requirements of this section; provided, however, that when the county or the city in which a county is wholly contained has not placed in operation a plan conforming to that prescribed in subdivisions three or four of this section and the judge, justice or magistrate is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when the county or the city in which a county is wholly contained has not placed in operation any plan conforming to that prescribed in this section, the judge, justice or magistrate may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same

rate as is prescribed in section seven hundred twenty-two-b of this chapter.

Upon an appeal in a criminal action, and on any appeal described in section eleven hundred twenty of the family court act or section four hundred seven of the surrogate's court procedure act, wherein the party is financially unable to obtain counsel, the appellate court shall assign counsel furnished in accordance with the plan, conforming to the requirements of this section, which is in operation in the county or in the city in which a county is wholly contained wherein the judgment of conviction, disposition, or order of the trial court was entered; provided, however, that when such county or city has not placed in operation a plan conforming to that prescribed in subdivisions three or four of this section and such appellate court is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when such county or city has not placed in operation any plan conforming to that prescribed in this section, such appellate court may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this chapter.

§46. Section seven hundred twenty-two-b of such law, as last amended by chapter six hundred eighty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§722-b. Compensation and reimbursement for representation. All counsel assigned in accordance with a plan of a bar association

conforming to the requirements of section seven hundred twenty-two whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive compensation at a rate not exceeding fifteen dollars per hour for time expended in court or before a magistrate, judge or justice, and ten dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred. Where a defendant is charged with a crime which may be punishable by death compensation shall not exceed one thousand five hundred dollars where one counsel has been assigned, and shall not exceed two thousand dollars where two or more counsel have been assigned. Where a defendant is charged with one or more other felonies, compensation shall not exceed five hundred dollars. Where a defendant is charged with one or more other crimes, compensation shall not exceed three hundred dollars. For representation pursuant to the provisions of section two hundred sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, compensation shall not exceed three hundred dollars. For representation upon the hearing of a motion for a writ of error coram nobis or a motion to vacate judgment or set aside sentence made pursuant to article four hundred forty of the criminal procedure law, compensation shall not exceed three hundred dollars. For representation in the court of appeals on an appeal from a judgment of death, compensation shall not exceed one thousand five hundred dollars where one counsel has been assigned, and shall not exceed two thousand dollars where two or more counsel have been assigned. For

representation in an appellate court on an appeal from a judgment of conviction for one or more other felonies, compensation shall not exceed five hundred dollars. For representation in an appellate court on an appeal in any other criminal action or proceeding, or on any appeal described in section eleven hundred twenty of the family court act or section four hundred seven of the surrogate's court procedure act, compensation shall not exceed three hundred dollars.

For representation on an appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the court where judgment of conviction or acquittal or order of dismissal was entered. In extraordinary circumstances the court may provide for compensation in excess of the foregoing limits and for payment of compensation and reimbursement for expenses before the completion of the representation.

Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

No counsel assigned hereunder shall seek or accept any fee for representing the party for whom he is assigned without approval of the court as herein provided.

§47. Section seven hundred twenty-two-c of such law, as amended by chapter six hundred eighty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§722-c. Services other than counsel. Upon a finding in an ex parte proceeding that investigative, expert or other services

are necessary and that the defendant or other person described in section two hundred forty-nine or section two hundred sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, is financially unable to obtain them, the court shall authorize counsel, whether or not assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of three hundred dollars.

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

§48. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, that nothing herein contained shall be construed so as to alter, affect, impair, defeat or restore any rights, obligations, duties or interests accrued, incurred, conferred or terminated prior to the effective date of this act.

NOTE: Subdivisions six and seven of section three hundred eighty-four of the Social Services Law, proposed to be repealed by this Act, relate to proceedings to terminate parental rights. They would be replaced by the more extensive provisions of Section 384-b, proposed to be added to the Social Services Law by this Act.

NOTE: Sections six hundred twelve, six hundred thirteen and six hundred fifteen of the Family Court Act, proposed to be repealed by this Act, provide for a definition of "permanently neglected child", for venue and for appropriate petitioners in permanent neglect proceedings. They would be replaced by provisions of Section 384-b, proposed to be added to the Social Services Law by this Act.